IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

SA.No. 396 of 1993(E)

AS.46/1991 of ADDL. SUB COURT, PALAKKAD
OS.92/1987 of MUNSIFF COURT, ALATHUR
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APPELLANT/1ST RESPONDENT/FIRST DEFENDANT:-

KUMARAN EZHUTHASSAN, S/O, GOVINDAN
EZHUTHASSAN, RESIDING AT KUTHANUR AMSOM
ALATHUR TALUK, PALAKKAD DIST.

BY ADV. SRI.V.CHITAMBARESH.

RESPONDENTS/APPELLANTS 3 AND 4/SECOND RESPONDENT/SECOND DEFENDANT:
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1. VELAYUDHAN, S/O. MAYAN, RESIDING AT
KUTHANUR AMSOM, ALATHUR TALUK
PALAKKAD DIST.

2. KOMBAN, S/O. THEVAN, RESIDING AT
KUTHANUR AMSOM, ALATHUR TALUK
PALAKKAD DIST.

3. GOPALAKRISHNAN EZHUTHASSAN,
S/O. GOVINDAN EZHUTHASSAN, RESIDING AT
KUTHANUR AMSOM, ALATHUR TALUK
PALAKKAD DIST.

BY

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 19/03/2007, THE COURT ON 19/03/2007 DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 396 OF 1993

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DATED THIS THE 19th DAY OF MARCH, 2007

JUDGMENT

First def**endant in O.S.92/1987 on the file of Munsiff Court, Alathur is the appellant. Respondents are the defendants. Respondents instituted the suit seeking a decree for permanent prohibitory injunction restraining the appellant from obstructing members of Ezhava and Harijan community from taking stuffed bulls at the time of conducting the festival called 'Kathirvela' in the plaint schedule temple. Case of respondents was that in the plaint schedule temple, Kathirvela used to be conducted on last Friday of every month of Kumbham. In that festival members of Ezhava and Harijan communities used to take two stuffed bulls for procession and it is an ancient custom and appellant or third respondent are not entitled to obstruct the same and therefore they are to be restrained by a permanent prohibitory injunction from causing any obstruction. Only appellant, first defendant, filed a written statement disputing the right of the respondents 1 and 2 the plaintiffs. It was contended that civil court has no jurisdiction to entertain a dispute and the temple is being managed by respondents and O.S.52/1982 was earlier filed by Arumughan**

claiming right over the temple which was dismissed by the court and O.S.12/1983 was later filed which was also dismissed by the court and there is no custom or practice as claimed and therefore the suit is to be dismissed. It was also contended that respondents 1 and 2 are not Hindus or members of Ezhava or Harijan community as claimed.

2. Learned Munsiff framed the necessary issues. On the evidence of Pws 1 to 3 and DW1 and Ext.B1 and X1, learned Munsiff dismissed the suit holding that the suit is barred under Section 93 of Madras Hindu Religious and Charitable Endowments Act, 1951(hereinafter referred to as the 'Act'). Respondents challenged the decree and judgment before Sub Court, Palakkad in A.S. 46/1991. Learned Sub Judge found that the suit will not come within the scope of Section 93 of the Act and therefore suit is maintainable. Learned Sub Judge, on the evidence, found that the custom set up by respondents was established and appellant is not entitled to obstruct the same. A decree was granted restraining appellant and third respondent by a permanent prohibitory injunction from causing any obstruction to the respondents 1 and 2 in participating in Kathirvela by demonstrating sufficient bulls. Second appeal was filed challenging the decree and judgment

granted by first appellate court.

3. Learned counsel appearing for appellant was heard. The appeal was admitted after formulating the following substantial questions of law.

i)Whether first appellate court was correct in holding that the suit is maintainable in spite of the bar provided under Madras Hindu Religious and Charitable Endowments Act, 1951.

ii)Whether first appellate court was right in granting the decree without a prayer for declaration of the right claimed.

4. Though notice was served on the respondents, they did not appear.

5. Learned counsel appearing for appellant was heard.

6. The arguments of learned counsel appearing for appellant was that Section 93 of the Act bar the suit as under Section 57(e) the Deputy Commissioner has jurisdiction to decide the dispute involved in the suit and therefore first appellate court should not have interfered with the decree passed by learned Munsiff. Learned counsel also argued that there is no evidence to prove that plaintiffs are members of Ezhava and Harijan community and second respondent was not examined and no member of the Harijan community was examined and neither the velichapadu nor other officials of the

temple were examined to prove the custom and therefore first appellate court should not have granted the decree.

6. Even though learned Munsiff held that suit is not maintainable in view of the bar provided under Section 93 of the Act, first appellate court held that the bar will not operate. It is seen from the pleadings that appellant had no case that the suit is barred under the provisions of the Act. What was contended in the written statement was only that the right claimed is a religious right and therefore civil court has no jurisdiction. The case was not that the plaintiffs have a remedy under the Act and therefore the suit is not maintainable. Even if it is taken that the question of bar of jurisdiction being a question to be decided, as rightly found by first appellate court, what is barred under Section 93 of the Act is a suit or legal proceedings in respect of administration or management of a religious institution or any other matter of dispute for determining or deciding under the provision is made in the Act. There is no provision in the Act which enables the community of the plaintiffs to get a decree for injunction in respect of the right they were being enjoyed. Section 57(e) empowers the Deputy Commissioner to decide whether any person is entitled by custom or otherwise to any honour, emolument or

perquisites in any religious institution and what the established usage of a religious institution in regard to any other matter. First of all, the evidence of appellant as PW1 was that the Madras Hindu Religious and Charitable Endowments Act does not apply to the plaint temple at all. If that be so, the bar provided under Section 93 of the Act also cannot be applied. Even if the bar applies, the suit is not barred as the dispute in the suit is not a matter to be decided by the Deputy Commissioner under Section 57(e) of the Act. Therefore first appellate court rightly held that the suit is not barred under Section 93 of the Act.

7. The decree granted by first appellate court is only restraining appellant and the third respondent from causing any obstruction to the respondents 1 and 2 in participating in Kathirvela by demonstrating stuffed bulls. The decree will not enable respondents 1 and 2 to conduct Kathirvela. Decree only provides that when Kathirvela is being conducted by temple authorities, plaintiffs are entitled to participate in it by demonstrating stuffed bulls, finding that they have a right. The case of appellant was not that the right to demonstrate stuffed bulls vests with somebody else than plaintiffs or members of their communities. On the other hand specific case was that

there was no Kathirvela festival. Therefore if the evidence establish that they are used in Kathirvela festival in the temple the case of the appellant that respondents have no right to participate in the demonstration of stuffed bulls can only be rejected. First Appellate Court, on appreciating the evidence, found that Kathirvela used to be conducted in temple during the month of Kumbham and in the Kathirvela demonstration of stuffed bulls used to be there and by practice it was being done by Ezhava and Harijan communities. It is on that basis decree was granted. As the decree do not enable plaintiffs to conduct Kathirvela festival and instead only permit plaintiffs to demonstrate stuffed bulls at the time of Kathirvela, I do not find any reason to interfere with the discretion exercised by First Appellate Court.

The second appeal is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-